

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13130 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

SHIVSHANKAR S DIXIT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 13130 of 2003
MR MM PARMAR for MR PH PATHAK for Petitioner No. 1
MR ND GOHIL, AGP for Respondents

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 28/10/2004

ORAL JUDGEMENT

Rule. Learned AGP Mr.N.D.Gohil waives service of rule on behalf of the respondents. At the joint request of the learned advocates appearing for the parties, the

petition is taken for final disposal today.

2. The petitioner was working as Senior Clerk in Janta Hindi Madhyamik Vidyalay, Ahmedabad. On 1.10.88, the services of the petitioner came to be terminated, which action the petitioner challenged before the Gujarat Secondary Education Tribunal, Ahmedabad. During the pendency of the proceedings before the Secondary Education Tribunal, the parties arrived at a settlement and it was agreed that the petitioner would be reinstated in service with full backwages. The petitioner in turn had tendered his apology for any behaviour which might have hurt the Managing Trustee of the Trust running the school and had undertaken not to repeat such behaviour in future. This settlement was recorded in a purshis which was produced before the Secondary Education Tribunal and on the basis of the purshis, it was recorded that since the school has reinstated the petitioner in service with continuity and backwages, no separate order is required to be passed in this regard. It was directed that the backwages be paid over within a period of 30 days. It was, however, provided that the school may apply to the Government for receiving grant for the wages for the intervening period and the department shall take a decision in this regard. In view of the above order, the proceedings initiated by the petitioner before the Secondary Education Tribunal came to be disposed of on 11.3.93. It is the case of the petitioner that despite order, he did not immediately receive the amount of backwages. However, eventually, the payments were made. The respondents, however, did not grant the benefit of the period between termination and the actual reinstatement for the purpose of retirement benefits of the petitioner after he superannuated with effect from 31st December 1997. The petitioner, therefore, once again approached the Secondary Educational Tribunal and the Tribunal by its order dated 10.8.99 in Application No.156/99 filed by the petitioner directed the Department to pass appropriate order keeping in view that the period for which the petitioner remained under termination is treated as on duty in view of the settlement arrived at between the parties and also in view of the High Court order pursuant to which the petitioner was paid full salary for the said period by the Government. It was, therefore, directed that the Department shall forthwith clarify this point to the Pension and Provident Fund Director which would enable them to process the case of the petitioner. The order dated 11.3.93 passed by the Secondary Education Tribunal as well as the order dated 10.8.99 passed by the Tribunal in Application No.156/99 are ordered to be taken on record.

3. Despite the said order, since the respondent did not grant the benefits of the intervening period for the pensionary benefits of the petitioner, the petitioner filed Special Civil Application No.13395 of 2000 before this Court. The said petition came to be disposed of by the order dated 1.8.02 in which the learned single Judge was pleased to make the following observations and give consequential directions.

"5. Having heard learned advocate for the parties, at the out-set it may be noted that no specific direction is required to be given by this Court in favour of the petition as the same is already granted by the Gujarat Secondary Education Tribunal in Application No.156/99 by order dated August 10, 1999. It is not in dispute that the said order is not subject matter of challenge anywhere and none of the parties have approached any higher forum against that order. The order has therefore attained finality. All that is required to be done by this Court is to once again direct the respondents to follow the instructions of the Tribunal issued in the oral judgment dated August 10, 1999 while disposing of application No.156/99 (Annexure A). This would take care of the reliefs sought by the petitioner. So far as interest part is concerned, this Court expresses no opinion on it at this stage. The respondent authorities are directed to implement the order of the Tribunal as stated above as early as possible, preferably within eight weeks from the date of receipt of the order. The petition is allowed accordingly. Rule made absolute. No costs."

4. It is the grievance of the petitioner that despite the directions of this Court, the respondents are not treating the period from 1.10.88 i.e. date of termination to 29.10.92 i.e. date on which the petitioner was actually reinstated in service for giving pensionary benefits to the petitioner. The petitioner has, therefore, filed this petition praying for direction for setting aside the order Annexure E dated 16.4.03 by which the Deputy Secretary, Education Department has communicated to the advocate of the petitioner that the petitioner is being paid pension on the basis of his 17 years of continuous service and since the petitioner was under termination from 1.10.88 to 29.10.92, he cannot get the pensionary benefits for the said period.

5. To my mind the approach of the authorities is fully unjust and illegal. The services of the petitioner were terminated on 1.10.88, but he was reinstated with effect from 29.10.92 with full backwages and also continuity of service. In the order dated 11.3.93, the Secondary Education Tribunal also noted that since the petitioner was reinstated in service with continuity of service and backwages, no further order is required to be passed in this regard. Subsequently also, admittedly, the petitioner was paid full salary for the intervening period, that too from the Government coffers. When the petitioner approached the Secondary Education Tribunal on the second occasion by filing Application No.156/99, the Tribunal once again took notice of these aspects of the matter and directed the Government to clarify the point to the Pension and Provident Fund Director to enable the said office to process the case of the petitioner at an early date. In the said order dated 10.8.99, the Tribunal did not permit the Government to take a fresh decision, but only directed the Government to clarify the point to the Pension and Provident Fund Director on the basis that the intervening period is treated as on duty for which the petitioner was also paid full salary by the Government. In the order dated 1.8.02 passed in Special Civil Application No.13395 of 2000 also, this Court had taken note of these aspects of the matter and observed that the order dated 10th August 1999 passed by the Education Tribunal in Application No.156/99 has not been challenged before the higher forum and the order has, therefore, attained finality. The Court, therefore, observed that all that is required to be done is to once again direct the respondents to follow the instructions of the Tribunal contained in the order dated 10th August 1999 which would take care of the relief sought for by the petitioner.

6. To my mind, the intention of the Secondary Education Tribunal in its order dated 10th August 1999 as reiterated by this Court in the order dated 1.8.02 was plain and clear, namely, that when the petitioner has been paid full salary for the intervening period, it was not open to the respondents to deprive the petitioner of his pensionary benefits by ignoring the intervening period for calculating the pension and other retiral benefits.

7. In the result, the impugned communication dated 16th April 2003 as at Annexure E is quashed and set aside. The respondents are directed to treat the services of the petitioner as continuous ignoring the

break between 1.10.88 to 29.10.92 and recalculate his pension and other benefits as if the petitioner had spent the said period on duty. The respondents shall pay to the petitioner all the benefits of pension and other retiral benefits on the above basis which shall be done within a period of eight weeks from the date of receipt of a copy of this order. With these directions, the petition is disposed of. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)